

Ng Bee Lee v Liew Kam Cheong

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HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO
S8-33-879 OF 2002
YEOH WEE SIAM JC
28 JULY 2010

B

Family Law — Financial obligation — Medical expenses — Wife's claim for medical expenses incurred due to renal failure problems — Whether husband liable to reimburse wife's medical expenses

C

Family Law — Matrimonial property — Division of property — Financial contribution — Whether property a matrimonial home or matrimonial asset — Property acquired by sole effort of husband — Contributions of wife as a housewife — Infidelity of wife — Whether wife entitled to a share in property — Law Reform (Marriage and Divorce) Act 1976 s 76(3) & (4)

D

Family Law — Matrimonial property — Division of property — Whether matrimonial property may be ordered to be held on trust for children of the marriage — Law Reform (Marriage and Divorce) Act 1976 s 76(1)

E

Faiza Tamby Chik J had granted a decree nisi after hearing the divorce petition in this case. The decree nisi, inter alia, ordered that: (i) the matrimonial home at Taman Tiara Kemensah ('the Kemensah property') be held on trust by the appellant ('wife') and respondent ('husband') for both their children until the children attained the age of 21 years; and (ii) the medical expenses of the appellant be borne by the respondent upon being furnished with proof of payment. Upon appeal by the respondent, the Court of Appeal ordered that the issues pertaining the Kemensah property and the medical expenses of the appellant be remitted to the High Court for rehearing. The Court of Appeal also awarded RM1,000 per month to be paid by the respondent to the appellant commencing from 1 March 2002 until the date of the order of the Court of Appeal, which amounted to RM58,000. The appellant claimed that the Kemensah property was given to her as a matrimonial home to enable her to live there with her children. The appellant also claimed that she suffered from chronic renal failure and that she was on dialysis for one year after the birth of her youngest daughter when both her kidneys broke down. The appellant claimed that she had to go for regular check ups and needed RM500 per month for supplementary medicine.

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Held, allowing the appeal in part:

- (1) Nowhere in s 76 of the Law Reform (Marriage and Divorce) Act 1976

- A ('the LRA') does it provide for the division of matrimonial assets by ordering that such assets be held by the parties on trust for their children until they attain the age of 21 years. If parties hold a matrimonial asset on trust for the children, it means that s 76 of the LRA has not been invoked or complied with (see para 9).
- B (2) The respondent never lived with the appellant and the two children in the Kemensah property. As such, the Kemensah property was not a matrimonial home of the respondent and the appellant. Nevertheless, the Kemensah property was a matrimonial asset as it was acquired during the marriage of the parties (see paras 12–13).
- C (3) Since the Kemensah property was acquired by the respondent's sole effort, the relevant provision that was applicable was s 76(3) and not s 76(1) of the LRA. In exercising the court's power under s 76(3) of the LRA to divide the matrimonial asset, the court applied s 76(4) of the LRA where it is mandatory for the court to have regard to: (a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family; and (b) the needs of the minor children, if any, of the marriage. Since the two children of the marriage were no longer minor children, s 76(4)(b) was not relevant (see paras 17, 18, 18(a)–(b) & 19).
- D (4) Based on the facts, a just division of the Kemensah property was 65% of it to be given to the respondent because he had contributed to nearly all of the purchase price of the property. Although, the appellant looked after the home and cared for the family as a full time housewife, in view of her close relationship with another man (Tai Ng), it was doubtful whether she was a completely good wife and mother who gave of her best to the welfare of her family at the time of the acquisition of the Kemensah property. Nevertheless, she was entitled to 35% of the Kemensah property for whatever she had contributed to the welfare of her family. This division of the Kemensah property was consistent with the principle stated in s 76(4) of the LRA. Furthermore, another matrimonial asset (the Cheras Perdana property) had also been sold and the proceeds had been divided equally between the respondent and the appellant (see paras 27–28).
- E (5) The appellant's claim for medical supplements of RM500 per month was rather high. It was doubtful if all this expenditure was directly related to the appellant's previous renal failure. Her kidney illness was no longer chronic. Therefore, the respondent had to pay to the appellant her medical expenses up to RM6,000 per year upon production of receipts provided that such expenses were incurred for the treatment or care of the renal failure problem only (see paras 36 & 38).
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[Bahasa Malaysia summary]

Faiza Tamby Chik H telah memberikan dekri nisi setelah mendengar petisyen perceraian dalam kes ini. Dekri nisi itu, antara lain, memerintahkan agar: (i) rumah perkahwinan di Taman Tiara Kemensah ('hartanah Kemensah') dipegang atas amanah oleh perayu ('si isteri') dan responden ('si suami') untuk kedua-dua anak mereka sehingga mereka mencapai umur 21 tahun; dan (ii) perbelanjaan perubatan perayu ditanggung oleh responden setelah diberikan bukti pembayaran. Semasa rayuan oleh responden, Mahkamah Rayuan juga telah mengawardkan RM1,000 sebulan untuk dibayar oleh responden kepada perayu bermula dari 1 Mac 2002 sehingga tarikh perintah Mahkamah Rayuan yang berjumlah RM58,000. Perayu mendakwa bahawa hartanah Kemensah itu telah diberikan kepadanya sebagai rumah perkahwinan untuk membolehkannya tinggal di situ dengan anak-anaknya. Perayu juga mendakwa bahawa dia mengalami kegagalan buah pinggang kronik dan bahawa dia perlu menjalani dialisis selama setahun selepas melahirkan anak perempuan bongsunya apabila kedua-dua buah pinggangnya gagal berfungsi. Perayu mendakwa bahawa dia perlu menjalani pemeriksaan tetap dan memerlukan RM500 sebulan untuk ubat tambahan.

Diputuskan, membenarkan sebahagian rayuan:

- (1) Tiada di mana-mana dalam s 76 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('AMU') memerintahkan untuk pembahagian aset-aset perkahwinan dengan memerintahkan agar aset-aset tersebut dipegang oleh pihak-pihak atas amanah untuk anak-anak mereka sehingga mereka mencapai umur 21 tahun. Jika pihak-pihak memegang aset perkahwinan atas amanah untuk anak-anak, ia bermaksud bahawa s 76 AMU telah tidak digunakan atau dipatuhi (lihat perenggan 9).
- (2) Responden tidak pernah tinggal dengan perayu dan dua orang anak-anaknya di hartanah Kemensah itu. Oleh itu, hartanah Kemensah itu bukan rumah perkahwinan responden dan perayu. Meskipun begitu, hartanah Kemensah adalah aset perkahwinan kerana ia diperoleh semasa perkahwinan pihak-pihak tersebut (lihat perenggan 12–13).
- (3) Memandangkan hartanah Kemensah telah diperoleh dengan usaha responden semata-mata, peruntukan relevan yang terpakai adalah s 76(3) dan bukan s 76(1) AMU. Apabila menggunakan kuasa mahkamah di bawah s 76(1) AMU untuk membahagikan aset perkahwinan, mahkamah telah menggunakan s 76(4) AMU di mana ia adalah mandatori untuk mahkamah mengambilkira: (a) takat sumbangan yang dibuat oleh pihak satu lagi yang tidak memperoleh aset-aset demi kebajikan keluarga dengan menjaga rumah atau memelihara keluarga; dan (b) keperluan anak-anak kecil, jika ada,

- A dalam perkahwinan itu. Memandangkan kedua-dua anak-anak daripada perkahwinan bukan lagi kecil, s 76(4)(b) tidak relevan (lihat perenggan 17, 18, 18(a)–(b) & 19).
- (4) Berdasarkan fakta, pembahagian yang adil ke atas hartanah Kemensah itu adalah 65% daripadanya diberikan kepada responden kerana dia telah menyumbangkan hampir keseluruhan harga belian hartanah itu. Meskipun perayu telah menjaga rumah dan memelihara keluarga itu sebagai suri rumah sepenuh masa, berdasarkan hubungan intimnya dengan lelaki lain (Tai Ng), ia meragukan sama ada dia sebenarnya seorang isteri dan ibu yang baik yang telah memberikan yang terbaik demi kebajikan keluarganya pada masa pemerolehan hartanah Kemensah itu. Meskipun begitu, dia berhak kepada 35% daripada hartanah Kemensah itu untuk apa saja yang telah disumbangkannya demi kebajikan keluarganya. Pembahagian hartanah Kemensah ini adalah konsisten dengan prinsip yang dinyatakan dalam s 76(4) AMU. Tambahan pula, satu lagi aset perkahwinan (hartanah Cheras Perdana) juga telah dijual dan hasilnya telahpun dibahagikan sama rata antara responden dan perayu (lihat perenggan 27–28).
- (5) Tuntutan perayu untuk ubat tambahan sebanyak RM500 sebulan agak tinggi. Adalah meragukan jika semua perbelanjaan ini secara langsung berkait dengan kegagalan buah pinggang perayu sebelum ini. Penyakit buah pinggangnya tidak lagi kronik. Oleh itu, responden perlu membayar perayu perbelanjaan perubatannya sehingga RM6,000 setahun selepas mengemukakan resit-resit dengan syarat perbelanjaan sedemikian ditanggung untuk rawatan atau penjagaan masalah kegagalan buah pinggang sahaja (lihat perenggan 36 & 38).]

Notes

- G For cases on division of property, see 7(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3714–3812.
For cases on financial obligation generally, see 7(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3479–3596.

Cases referred to

- H *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 105, CA (refd)
Lim Bee Cheng v Christopher Lee Joo Peng [1997] 4 MLJ 35; [1996] 2 CLJ 697, HC (refd)

I Legislation referred to

- Law Reform (Marriage and Divorce) Act 1976 s 76, s 76(1), (4), (4)(a), (b)
Haresh Mahadevan (Haresh Mahadevan & Co) for the appellant.
Marianne Paul (Shui-Tai) for the respondent.

Yeoh Wee Siam JC:

[1] This is an appeal by Ng Bee Lee, the petitioner wife ('the appellant'), against my decision made in chambers on 15 July 2010.

BACKGROUND FACTS

[2] On 26 July 2004 Faiza Tamby Chik J granted a decree nisi after hearing the divorce petition in this case. The decree nisi, inter alia, ordered the following, that:

- (a) the marriage between the appellant and Liew Kam Cheong, the respondent husband ('the respondent') be dissolved;
- (b) the custody, care and control of the two children of the marriage, namely, Liew Teng Teng and Liew Wai Teng be granted to the appellant, with reasonable access to the respondent;
- (c) the maintenance of RM2,530 per month for the two children be paid by the respondent;
- (d) the education, medical and dental expenses of the two children be paid by the respondent upon being furnished with proof of payment;
- (e) the matrimonial home at No 6, Jalan Tiara Kemensah 1, Taman Tiara Kemensah, Ulu Klang, Kuala Lumpur be held on trust by the appellant and respondent for both children until the children attain the age of 21 years ('the Kemensah property');
- (f) the medical expenses of the appellant be borne by the respondent upon being furnished with proof of payment;
- (g) the decree nisi be made absolute after three months; and
- (h) both parties are to bear their respective costs.

[3] Upon appeal by the respondent regarding the above decree nisi order, on 6 December 2006 the Court of Appeal ordered, inter alia, that the matters in (e) and (f) above be remitted to the High Court, Kuala Lumpur for rehearing, namely, regarding:

- (a) the Kemensah property; and
- (b) the medical expenses of the appellant.

[4] The Court of Appeal allowed the cross-appeal of the appellant for RM56,310 to be paid by the respondent as arrears of maintenance for the two

A children. The same court also awarded RM1,000 per month to be paid by the respondent to the appellant commencing from 1 March 2002 until the date of the order of the Court of Appeal, which amounted to RM58,000.

B [5] In her amended petition (encl 66), the appellant prayed for the Kemensah property and her medical expenses to be granted to her on the following grounds:

- C (a) the Kemensah property was given to the appellant as a matrimonial home to enable the appellant to live there with her children; and
- (b) the appellant had renal failure and applied for the respondent to bear her medical costs.

D DECISION

[6] I reheard the case regarding issues (a) and (b) above, and on 15 July 2010 I gave my decision as follows:

- E (a) regarding the Kemensah property, I held that it is a matrimonial asset, and I divided it by giving the respondent 65% and the appellant 35% share of such property;
- F (b) regarding the medical expenses of the appellant, I allowed this, which means that the respondent has to pay the appellant her medical expenses but such expenses are limited to not more than RM6,000 per year provided that they are supported by receipts and are incurred for the treatment or medical care of the appellant's renal failure problem only;
- G (c) each party is to bear his/her own costs.

The appellant is now appealing against the whole of the above decision.

THE KEMENSAH PROPERTY

H [7] Faiza Tamby Chik J, in the first hearing in the High Court, had ordered that the Kemensah property be held on trust by both the appellant and respondent for both children until the children attain the age of 21 years. By the fact that the Court of Appeal ordered such decision to be remitted to the High Court for rehearing, it means that the decision of the learned judge is not acceptable to or confirmed by the Court of Appeal.

I [8] Section 76 of the Law Reform (Marriage and Divorce) Act 1976 ('the LRA') provides for the division of matrimonial assets as follows:

76 Power for court to order division of matrimonial assets

(1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1) the court shall have regard to —

(a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;

(b) any debts owing by either party which were contracted for their joint benefit;

(c) the needs of the minor children, if any, of the marriage,

and subject to those considerations, the court shall incline towards equality of division.

(3) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

(4) In exercising the power conferred by subsection (3) the court shall have regard to —

(a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;

(b) the needs of the minor children, if any, of the marriage;

and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

[9] From s 76 of the LRA it is very clear that at the time when the court grants a decree of divorce, the court has the power to order the division between the parties of assets acquired during the marriage. Nowhere in s 76 of the LRA does it provide for the division of matrimonial assets by ordering that such assets be held by the parties on trust for their children until they attain the age of 21 years. If parties hold a matrimonial asset on trust for the children, which was ordered by the previous judge, it only means that the matrimonial assets are still

- A not divided upon the divorce being granted to the parties and, strictly speaking, s 76 of the LRA has not been invoked or complied with.

- B [10] In the rehearing before me, I had to determine how the Kemensah property should be divided between the parties upon the decree of divorce being granted by the court.

Whether the Kemensah property is a matrimonial asset

- C [11] Faiza Tamby Chik J, in his decree nisi order, referred to the Kemensah property as a matrimonial home. The question is whether such property is a matrimonial home.

- D [12] The respondent testified that the Kemensah property is not the matrimonial home of the parties. Instead, the actual matrimonial home was at No 20, Jalan Pria 6, Taman Maluri, Cheras, Kuala Lumpur because the respondent, the appellant and their children lived there, together with the respondent's parents. The appellant did not dispute this. In fact, by the appellant's own admission, after she moved out from the house of the respondent's parents, she was initially living with her two children in a flat at Taman Dagang. Later, the appellant and the two children moved to the Kemensah property since the Taman Dagang flat was in a very bad condition, being filled with dengue mosquitos and infested with drug addicts. The appellant and her two children are now still living in the Kemensah property. The facts show clearly that the respondent never lived with the appellant and the two children in the Kemensah property. As such, I concluded that the Kemensah property is not a matrimonial home of the respondent and the appellant.

- G [13] Notwithstanding that, I found that the Kemensah property is a matrimonial asset ie it is an asset acquired during the marriage of the parties. This is confirmed by the evidence of both the respondent and the appellant. The Kemensah property was purchased by the respondent and the appellant on 7 April 2000 from the developer, Mesra Harapan Sdn Bhd. The sale and purchase agreement was exhibited in pp 1–23 of the respondent's bundle of documents. The parties were married on 27 December 1986. Their marriage was dissolved on 26 July 2004 (see witness statement of the respondent, RW1-WS). Clearly, the date, 7 April 2000, for the purchase of the Kemensah property was during the marriage of both parties. Accordingly, I held that the Kemensah property is a matrimonial asset, even though it is not a matrimonial home.

- I *How should the Kemensah property be divided*

[14] Having found that the Kemensah property is a matrimonial asset, the court then had to exercise its powers under s 76 of the LRA to divide it.

[15] Both the respondent and the appellant gave evidence which are consistent with each other, namely, that the respondent was the one who paid for almost the full purchase price of the Kemensah property ie RM526,750. The appellant was then a housewife, and not working. She therefore only gave a nominal monetary contribution towards the purchase of such property.

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[16] The respondent therefore claimed that the Kemensah property was acquired during the marriage by his sole effort. However, the respondent allowed the appellant to hold half a share of the Kemensah property. All this is not disputed by the appellant.

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[17] In this case, since the respondent is claiming that the Kemensah property was acquired by his sole effort, the relevant provision that is applicable here is s 76(3) and not s 76(1) of the LRA (s 76(1) of the LRA covers the division of matrimonial assets acquired by the joint efforts of both parties).

C

[18] In exercising the court's power under s 76(3) of the LRA to divide the matrimonial asset, I had to apply s 76(4) of the same Act where it is mandatory for the court to have regard to:

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- (a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family; and
- (b) the needs of the minor children, if any, of the marriage.

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[19] In this case, there is no dispute that the two children of the marriage are now above 18 years of age, being 22 years and 19 years old respectively and are no longer minor children. As such, s 76(4)(b) of the LRA would not be relevant here. Thus, the court only has to consider s 76(4)(a) in dividing the matrimonial assets.

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[20] What then are the appellant's contributions towards the acquisition of the Kemensah property? The appellant testified that she contributed in the taking care of the two children when the respondent went to work. She put in a lot of effort towards her children's education and her eldest daughter scored ten A1s for her SPM and her youngest daughter scored 7As and 3Bs. The appellant claimed that she always cooked for her second child when she came home to the Kemensah property after her classes at TAR College.

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[21] The respondent attempted to prove that the appellant had a relationship with two men ie Ho Kee Seong and Tai Ng (or Terry). This was to:

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- A (a) disprove the appellant's assertion that she is a good mother when in fact she has loose moral standards by involving herself with other men, especially in the case of Tai Ng (by having him stay overnight at the Kemensah property); and
- B (b) to discredit the petitioner's testimony that she is not having any affairs when in actual fact she is lying.

C [22] The respondent disputed the appellant's claim that she was the one who contributed to the children's education and was taking care of the children when the respondent went to work. He testified clearly, in his cross-examination and re-examination, that since their birth, both children were sent to the appellant's mother to be taken care of until the first daughter was in pre-school and the second daughter was in primary 3. The respondent did not deny that his daughters are intelligent. However, he submitted that it is misleading for the appellant to claim full credit for the results of the daughters.

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E [23] On the facts, I find that the respondent had paid for almost the full purchase price of the Kemensah property. The appellant only gave a nominal monetary contribution. However, she did contribute to the welfare of the family by looking after the home or caring for the children since she was not a career woman, but was a housewife. During the hearing, the respondent did not adduce cogent evidence of the appellant committing adultery with either Tai Ng or Ho Kee Seong. The respondent's contention of the appellant's alleged adultery cannot be proved by merely referring to the respondent's police report, the petitioner's police report, and the private investigator's report in pp 5–35 of the respondent's second bundle of documents ('bundle D'). Such documents should be produced in court, and other supporting or corroborative evidence adduced in order to prove the allegation, but this was not done.

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G [24] However, by the appellant's own testimony, it appears to me that she did have an unusually good and close relationship with Tai Ng even though he was just her neighbour eg he sent her to hospital for treatment sometimes if she was unable to drive the car due to her high blood pressure caused by her renal failure problem. He also helped her to send her kids to school when she was ill.

H According to the appellant's daughter ('PW2'), when she was asked whether Tai Ng spent the night there at the Kemensah property, the daughter replied 'Not for now', which implies that previously Tai Ng had spent the night at the Kemensah property, and this is contrary to the appellant's evidence that Tai Ng is only just a neighbour.

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[25] In *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 105 it was held by the Court of Appeal, inter alia, as follows:

[2] the learned judge had clearly taken into consideration the individual circumstances of both parties, the needs and responsibilities of the parties, the assets and the earning capacity of the appellant. A

[3] ...

[4] Although the respondent had not contributed financially to the property at No 111 Queen's Court in London that was acquired by the appellant prior to his marriage with the respondent, the respondent had used her salaries towards the upkeep of the household as well as to buy groceries. That would be the contribution by the respondent and she was entitled for the share of the property. Therefore, it was not wrong for the judge to decide that the said property was to be regarded as matrimonial property. B
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[26] In *Lim Bee Cheng v Christopher Lee Joo Peng* [1997] 4 MLJ 35; [1996] 2 CLJ 697 the respondent husband bought the house and put the petitioner wife's name as a co-owner. At p 44 (MLJ) and p 698 (CLJ), the court held, *inter alia*, as follows: D

... strictly in accordance with the requirements under s 76(4) it would follow that the husband should receive a greater proportion of the share or proceeds of the sale, and upon the facts of the current case, the court holds that the petitioner's share of the proceeds be limited to no more than one-third undivided share of the said property or of the proceeds of sale. E

[27] Based on the facts and law, I decided that a just division of the Kemensah property would be 65% of it to be given to the respondent because he had contributed to nearly all of the purchase price of the property. The appellant did look after the home and care for the family since she was a full time housewife. In view of the appellant's close relationship with Tai Ng, the court is doubtful whether the appellant was a completely good wife and mother who gave of her best to the welfare of her family, namely, the respondent and the two children, at the time of the acquisition of the Kemensah property. Due to this, it is not be possible for the court to allow her to have 50%, or even 100%, of the Kemensah property. However, the court is of the opinion that she is entitled to 35% of the Kemensah property for whatever she had contributed to the welfare of her family, by looking after the home or caring for the family. F
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This division of the Kemensah property is consistent with the principle stated in s 76(4) of the LRA which provides that 'in any case the party by whose effort the assets were acquired shall receive a greater proportion'.

[28] When I decided on the figure of 35% share of the Kemensah property for the appellant, I bore in mind the evidence of the respondent that for the other matrimonial asset ie the Cheras Perdana property, pursuant to the court order dated 8 August 2005, that property had been sold, after the divorce, and the proceeds divided equally between the respondent and the appellant. So, the I

- A** Kemensah property is not the only matrimonial asset for which the appellant was given a share. In addition, pursuant to the Court of Appeal order dated 6 December 2006, the appellant is now paid a monthly sum of RM1,000 by the respondent. The appellant stated that she does not have a monthly income. However, she admitted that she owned other properties, namely, a
- B** condominium at Putra Majestik worth over RM200,000, a shop house also at Putra Majestik worth RM398,000, a house at Bukit Jelutong purchased at RM380,000, and a house at Taman Maluri which is said to be purchased at RM300,000 from Tai Ng. She claimed that she worked part time and took loans to buy properties, and that the respondent had nothing to do with her
- C** properties. Learned counsel for the respondent submitted that whilst the respondent single handedly supported the family, the appellant kept all her money and secretly invested in properties under her personal name, without sharing them with the respondent.
- D** [29] After considering the decree nisi order, the Court of Appeal order, and the division of matrimonial assets globally, I am of the opinion that the appellant, having already been given 50% of the proceeds of the Cheras Perdana property, is actually very fortunate to now get 35% of the Kemensah property when she had only made a nominal monetary contribution towards
- E** the acquisition of such property.

[30] I therefore ordered accordingly.

THE MEDICAL EXPENSES OF THE APPELLANT

- F**
- G** [31] The appellant claimed that previously she had chronic renal failure and her costs for her monthly medical treatment is RM200. She gave evidence that she was on dialysis for one year after the birth of her youngest daughter when both her kidneys broke down. She stated that she needs continuous treatment and even until today she is on medication. She still regularly goes to the University Hospital ('UH') for her check up and to monitor her kidney problem. She needs RM500 towards supplementary medicine.
- H** [32] On the other hand, the respondent stated that during the marriage, the appellant did not suffer from any chronic renal failure. He admitted that the appellant had a kidney problem after their second daughter was born. However, the appellant recovered after three years and was completely healthy thereafter. According to him, the appellant's hypertension is a side effect of the
- I** kidney failure. He stated that the appellant's claim for medical expenses is unreasonable since the appellant is not suffering from any chronic renal failure. Moreover, the respondent is now paying the appellant maintenance as ordered by the Court of Appeal and this should cover all her medical expenses.

[33] The appellant relied on her medical card in bundle B pp 9–10. Page 9 is a prescription by the UH of medication for the appellant starting on 5 November 2001 for 30 weeks. Page 10 shows the various follow up dates from 2003–2008 at the renal clinic. Under cross-examination, the appellant conceded that these documents do not show that she is still suffering from chronic renal failure. She stated that she is able to provide a medical report to show that she is indeed suffering from such illness.

[34] As submitted by learned counsel for the respondent, until a medical report is produced, there is doubt whether the appellant is indeed suffering from such illness due to the following reasons:

- (a) the document in p 9 is dated 7 July 2008 and, as such, is not a current document or accurate evidence to show that the appellant's alleged illness is ongoing, or what her illness is for that matter;
- (b) the appellant's appointment dates in p 10 show an average of two visits per year only till 2008 and, as such, cannot be accepted as evidence of a chronic renal failure; and
- (c) the appellant in her answer to question 4 in her witness statement (PW1–WS) stated that she was unable to drive due to her high blood pressure. Upon cross-examination, she claimed that she needs supplementary medicine for her low iron condition. As such, there appears to be some contradiction of what the appellant is actually suffering from. If the appellant's supplementary medication is for low iron, this is for general good health and certainly the respondent cannot be expected to pay for such expenses.

[35] Under cross-examination, the appellant agreed that her kidney illness is not chronic now but her doctor told her that for kidney patients, they have to control it. Nowadays, she goes to the UH and different doctors treat her each time. She stated that she needs RM200 for her blood test and medical check up which she now goes for every three to six months. It appears that the RM200 is not a monthly expense but spreads over three to six months.

[36] From the evidence, it is clear that the appellant did suffer from kidney failure when her second daughter was born but she recovered from it after three years. Now her second daughter is already 19 years old, which means the appellant recovered about 16 years ago. In view of her history, the appellant requires constant medical check ups and blood tests which average about RM200 for every three to six months, therefore, an average of about RM33 to RM66 per month. The appellant is taking medical supplements to keep herself healthy eg for her low iron level, and also for her hypertension. The hypertension may still be a side effect of her previous kidney failure or it may not be related. To ascertain that, a medical report would be necessary but this

A was not produced by the appellant. I find that her claim for medical supplements of RM500 per month is rather high. I am doubtful if all this expenditure is directly related to the appellant's previous renal failure. From her own testimony, her kidney illness is no longer chronic now.

B [37] In written submissions, the appellant prayed for the respondent to pay her medical and supplement expenses only upon the production of receipts.

C [38] In view of the appellant's need for constant medical follow up and blood test, I ordered that the respondent pays the appellant her medical expenses up to RM6,000 per year upon production of receipts and if such expenditure is incurred for the treatment or medical care of the appellant's renal failure problem only. I believe this is a very fair order.

D COSTS

[39] I ordered that each party should bear his or her own costs. This is only just, considering that this rehearing was held pursuant to the order of the Court of Appeal regarding the two above issues which concern both parties.

E *Appeal allowed in part.*

Reported by Kanesh Sundrum

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